

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION**

OSCAR RENE DIAZ,	:	CIVIL ACTION NO.
BOP Reg. # 57772-019,	:	2:17-CV-162-RWS
Movant,	:	
	:	CRIMINAL ACTION NO.
v.	:	2:06-CR-11-RWS-JCF-1
	:	
UNITED STATES OF AMERICA,	:	MOTION TO VACATE
Respondent.	:	28 U.S.C. § 2255

**ORDER**

This matter is before the Court on the Final Report and Recommendation of Magistrate Judge J. Clay Fuller (“R&R”), recommending that Movant’s Federal Rule of Civil Procedure 60(b) motion (Doc. 264) be denied as an impermissibly second or successive 28 U.S.C. § 2255 motion. (Doc. 266; *see* Doc. 265). Movant objects. (Doc. 268).

In reviewing a Magistrate Judge’s R&R, the district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). “Parties filing objections to a magistrate’s report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court.” *United States v. Schultz*, 565 F.3d 1353, 1361 (11th

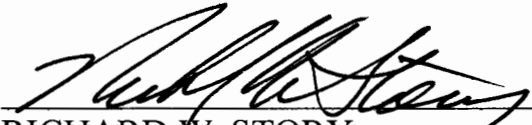
Cir. 2009) (quoting *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988)) (internal quotation marks omitted). Absent objection, the district court judge “may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate [judge],” 28 U.S.C. § 636(b)(1), and “need only satisfy itself that there is no clear error on the face of the record” in order to accept the recommendation. Fed. R. Civ. P. 72, advisory committee note, 1983 Addition, Subdivision (b). In accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Federal Rules of Civil Procedure, the Court has conducted a *de novo* review of those portions of the R&R to which Plaintiff objects and has reviewed the remainder of the R&R for plain error. *See United States v. Slay*, 714 F.2d 1093, 1095 (11th Cir. 1983).

It is undisputed that Movant previously filed a § 2255 motion that was dismissed as time-barred and a second § 2255 motion that was dismissed as impermissibly second or successive. (*See* R&R). In his objections, Movant asks the Court to at least review the merits of his claims, but the Court lacks jurisdiction to do so without authorization from the Eleventh Circuit, which Movant has not obtained. Movant’s objections (Doc. 268) are **OVERRULED**.

The Court **ADOPTS** the Magistrate Judge’s Final Report and Recommendation (Doc. 266) as the Opinion and Order of this Court; **DISMISSES** Movant’s motion

(Doc. 264); and **DENIES** Movant a certificate of appealability.

**SO ORDERED** this 19<sup>th</sup> day of Sept, 2017.

  
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RICHARD W. STORY  
UNITED STATES DISTRICT JUDGE